



HOUSE OF REPRESENTATIVES

SB 1428

PSPRS modifications

Prime Sponsor: Senator Lesko, LD 21

DP Committee on Insurance

DPA Caucus and COW

X House Engrossed

OVERVIEW

SB 1428 creates a new retirement benefit structure for public safety personnel hired on or after 7/1/2017 (Tier III) with two options: a defined benefit plan (Tier III PSPRS) and a defined contribution plan (PSPDC) and outlines contribution rates, retirement benefits and disability benefits for the plans. SB 1428 creates a new mechanism to offer a cost-of-living increase (COLA) applicable to retirees, current members and new Tier III members. SB 1428 expands the Public Safety Personnel Retirement System Board (Board) to nine members, outlines membership criteria, describes the appointment process and establishes a PSPRS Advisory Committee (Committee). SB 1428 requires the Board to study methods for risk pooling and local board consolidation. Several sections of SB 1428 are conditional upon the enactment of SCR 1019 by a vote of the people at the May 17, 2016 special election.

PROVISIONS

COLAs for PSPRS Tier I, Tier II and Tier III

General COLA Changes

1. Requires the PSPRS actuary to include the projected COLA cost in the calculation of normal cost and accrued liability.
2. Repeals the current permanent benefit increase statutes and replaces them with a new COLA benefit structure.

Tier I and II COLAs

3. Allows retired members and survivors hired before 7/1/2017 to receive a compounding COLA in the base benefit. The annual adjustment is based on the average change in consumer price index (CPI), up to 2% of the member's base benefit and is made on July 1 of each year.
 - a. Uses CPI from Phoenix-Mesa.
4. Prorates the first COLA paid based on retirement date and requires the first normal COLA payment to be made the year after.

Tier III COLAs

5. Provides a graduated COLA payment model based on the overall funded status of the Tier III PSPRS Plan for members hired on or after July 1, 2017 as follows:
 - a. 2% of the base benefit if the funded ratio is at least 90%
 - b. 1 ½% of the base benefit if the funded ratio is at least 80% but less than 90%
 - c. 1% of the base benefit if the funded ratio is at least 70% but less than 80%

- d. No COLA is provided if the funded status is lower than 70%
- 6. Provides that a retiree or survivor is eligible for a COLA beginning the earlier of either:
 - a. The first calendar year after the 7th anniversary of retirement, or
 - b. When the retired member is/would have been 60 years old
- 7. Defines *funded ratio* as the ratio of the market value of assets to the actual accrued liabilities.

Tier III (New Hires): General

- 8. Allows employees hired on or after 7/1/2017 to elect to either solely participate in the new PSPRS Tier or the PSPDC.
 - a. The election is irrevocable for the employee's employment with any employer under PSPRS.
 - b. Participation begins 90 days after the employee's hire date.
 - c. If the employee doesn't make an election, the employee is automatically enrolled in PSPRS.
- 9. Enrolls employees who select Tier III PSPRS in the PSPDC automatically if they are not covered by the Federal Old Age and Survivors Insurance System (Social Security).
 - a. If an employee not covered by Social Security moves to a covered employer, the employee cannot continue to contribute to the employee's PSPDC account while covered.
 - b. If the employee later moves to an employer who is not covered by Social Security, the employee must again contribute to the employee's PSPDC account. If the employee originally elected to contribute additional money to the employee's PSPDC account, the employee must pay the amount previously elected while working for an employer who is not covered.

Defined Contribution Plan (PSPDC)

General

- 10. Establishes the PSPDC and requires the Board to design and administer the PSPDC.
- 11. Outlines the purpose and legislative intent of the PSPDC.
- 12. Prescribes Board duties.

Contributions

- 13. Requires the following contribution amounts from both employees and employers:
 - a. For employees who are members of PSPRS and are not covered by Social Security: 3%
 - b. For employees in the PSPDC and not in PSPRS: 9%
- 14. Vests participant monies immediately and fully vests participants in PSPDC after 10 years of service. Employer contributions vest at a rate of 10% per year.
- 15. Permits participants to make a one-time irrevocable election to contribute more than the specified amount, up to the amount allowable under the Internal Revenue Code. If a higher amount is selected, that amount is the contribution rate for the remainder of the participant's employment with any employer under PSPRS.
- 16. Requires employers to pay all contributions to PSPDC and allows employers to reduce compensation to make the required payment on behalf of the employee. Employees cannot

directly contribute to the PSPDC. Specifies how contributions are to be treated for tax purposes.

Catch Up Provision

17. Provides a “catch-up” PSPDC account for members of PSPRS who are not covered by Social Security and who were hired after 1/1/2012 but before 7/1/2017 as follows:
 - a. Participants contribute 3% per year
 - b. Employers contribute various amounts depending on the year in which the participant was hired:
 - i. 2012: 4% for FY 2018-24, 3% after
 - ii. 2013: 4% for FY 2018-23, 3% after
 - iii. 2014: 4% for FY 2018-22, 3% after
 - iv. 2015: 4% for FY 2018-21, 3% after
 - v. 2016: 4% for FY 2018-20, 3% after; and
 - vi. 1/1/2017-6/30/2017: 4% for FY 2018 and 3% after.
18. Allows members to make an irrevocable election on or before 6/30/2017 to opt-out of the “catch-up” PSPDC plan.

Disability

19. Establishes the PSPDC Disability Program (PSPDC Disability) for participants in PSPDC who elected to exclusively participate in the PSPDC.
20. Requires all PSPDC participants to participate in PSPDC Disability.
21. Requires employers and employees to contribute an amount determined by the Board that is necessary to pay ½ of benefits under and the costs of administering PSPDC Disability. Specifies how the contribution rate will be determined by the PSPRS actuary. Outlines the process for paying contributions, penalties for delinquent payments and adjustment for overages in payment.
22. Specifies that participant contributions to PSPDC Disability are not refundable. Contributions by the employer are irrevocable and must be used as benefits or to pay expenses associated with PSPDC Disability.
23. Requires the Board to use the same procedures and method for determining eligibility and calculating payments under PSPDC Disability as are used for the PSPRS disability program.
24. States that a PSPDC participant who meets the requirements for a disability pension under PSPRS receives a monthly benefit equal to the monthly disability pension provided to a PSPRS member hired on or after 7/1/2017, reduced by the monthly annuitized value of the participant’s annuity account (excludes COLA). Prescribes the method for calculating the annuitized value of the annuity account.
25. Outlines requirements of the Board in administering, managing and operating PSPDC Disability.
26. Establishes the PSPDC Disability Trust Fund (Fund) to pay benefits under and costs of administering PSPDC Disability. The Board administers the Fund.
27. Describes how monies in the Fund are managed, how abandoned monies are handled, interest accrual and custody of the Fund.

Miscellaneous

28. Allows retirees of the PSPDC Plan to obtain health and accident coverage through agreement with the Arizona State Retirement System in the same manner as retirees from other systems. Specifies that the participant pays the premium for coverage. Clarifies that PSPDC retirees are not eligible for the health benefit supplement.
29. Defines *annuity account, assets, board, compensation, defined contribution plan, disability program, employer, employer contribution, participant, pensionable compensation, and system*. Note: two definitions of *participant* are provided for purposes of the conditional enactment clause.

Tier III Defined Benefit Plan (Tier III PSPRS)

Contribution Rate

30. Requires employers of Tier III PSPRS members to pay 50% of the normal cost and actuarially determined amount required to amortize the total unfunded accrued liability (UAL) for each employer (amount only attributed to Tier III PSPRS members). Outlines the formula for making the UAL determination.
31. Requires Tier III PSPRS employees to pay the remaining 50% of normal cost and the amount required to amortize the UAL, divided by the total number of the employer's Tier III PSPRS employees so that each member contributes an equal percent of compensation. Requires member contributions to begin simultaneously with membership and be made through payroll deduction.
32. Prohibits the employer from contributing less than the normal cost for that Fiscal Year (FY).
33. Prohibits the Board from suspending contributions unless:
 - a. The actuary determines that continuing to accrue excess earnings could result in disqualification of System's tax-exempt status.
 - b. The Board determines that receiving additional contributions would conflict with its fiduciary responsibility.

Monthly Pension Calculation

34. Establishes a multiplier for determining a Tier III PSPRS member's monthly pension amount. A member must retire after the normal retirement date to be eligible. In determining the pension amount, the member's average monthly benefit compensation is multiplied by the number of whole and fractional years of credited service, multiplied by:
 - a. 15 years up to 17 years of service: 1.5%;
 - b. 17 years up to 19 years of service: 1.75%;
 - c. 19 years up to 22 years of service: 2.0%;
 - d. 22 years up to 25 years of service: 2.25%; or
 - e. 25+ years of service: 2.5%.
35. Limits the maximum pension to 80% of the average monthly benefit compensation.
36. Allows a member to retire early at 52 ½ years of age with at least 15 years of credited service and provides an actuarially equivalent retirement benefit to the multipliers listed above.
37. Allows a Tier III PSPRS member to be eligible for retirement and benefits if the member terminates employment prior to meeting the age requirement for normal retirement but later attains the normal retirement date (age 52 ½ for early retirement or age 55) and meets the credited service requirement for normal retirement (at least 15 years of service).

38. Limits the amount of a Tier III PSPRS member's compensation used for determining pension benefits to \$110,000. Allows the limit to be adjusted for inflation pursuant to the average change in the *public safety wage* index. Sets a ceiling for pensionable compensation at the maximum compensation limit under § 401(a)(17) of the Internal Revenue Code. The first adjustment will occur in FY 2021 and every third FY after.
39. Outlines the process and types of employers used to determine the *public safety wage index*. Specifies which agencies will be included in the first calculation of the *public safety wage index*.
40. Allows a member who terminates employment before age 55 to receive pension benefits if the member attains a normal retirement date and meets the credited service requirement for normal retirement. This is a retirement benefit and it is eligible for COLA increases.
 - a. Current Tier I members have the option of a deferred annuity that is not considered a retirement benefit. Members must reach 62 years of age and have at least 10 years of service.
 - b. Current Tier II(b) members do not have this option.

Miscellaneous

41. Defines *average monthly benefit compensation* as the five consecutive years within the last 15 years with the highest average. Includes a period of nonpaid or partially paid industrial leave based on the compensation the employee would have received if not on industrial leave.
42. Defines *normal retirement date* as the first day of the month after the employee completes 15 years of credited service, if the employee is at least 55 years old.
43. Defines *retirement* or *retired* as termination of employment after a member meets the age and credited service requirements for normal retirement.
44. States that if a member's employment is terminated, the liability associated with the member's service stays with the employer.

PSPRS Board of Trustees and PSPRS Advisory Committee (Committee)

Board Makeup

45. Increases the PSPRS Board of Trustees (Board) from seven to nine members on 1/1/2017 and outlines membership of the Board as follows:
 - a. Two members representing law enforcement:
 - i. One appointed by the President of the Senate, one by the Governor.
 - ii. At least one appointee must be an elected local board member.
 - iii. Nominations are forwarded from a statewide association representing law enforcement in the state to the appointing officials.
 - At least three nominees must be forwarded for each position.
 - b. Two members representing firefighters:
 - i. One appointed by the Speaker of the House, one by the Governor.
 - ii. At least one appointee must be an elected local board member.
 - iii. Nominations are forwarded from a statewide association representing firefighters in the state to the appointing officials.
 - At least three nominees must be forwarded for each position.
 - c. Three members representing cities or towns

- i. One appointed by the President of the Senate, one by the Speaker of the House and one by the Governor.
 - ii. Represent taxpayers or employers, cannot be members of PSPRS.
 - iii. Nominations are forwarded from an association representing cities and towns.
 - At least three nominees must be forwarded for each position.
 - d. One member representing counties, appointed by the Governor:
 - i. Represents taxpayers or employers, cannot be members of PSPRS.
 - ii. Nominated by an association representing county supervisors.
 - iii. At least three nominees must be forwarded.
 - e. One member appointed by the Governor from a list of nominees forwarded by the Board.
 - i. The Board must forward at least three nominees.
 - ii. Nominees are first selected from a list of five received by the Committee.
46. States that Board members who are not PSPRS members must be independent qualified professionals who are responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the fund. They must have at least 10 years of substantial experience in specific areas of expertise.
47. Prohibits a *securities dealer* ([A.R.S. 44-1801](#)) who is involved in securities or investments related to PSPRS investments from serving on the Board.
48. Requires appointees to be chosen from the list of appointees provided to the elected official making the appointment.
49. Allows Board members to be reappointed.
50. Provides that Board members may only be removed for cause by the appointing power or due to vacating the member's seat. Outlines the process for removal for cause or vacating the office.
51. Requires Board vacancies to be filled for the vacancy of the term and specifies that vacancies are filled in the same manner as initial appointment.
52. Requires the Board to select a Chair from its members every calendar year.
53. Prescribes the initial appointment process for the Board. Initial nominees are due on 8/1/2016 with the first appointment being made by 11/1/2016. Eight members will elect the Chair who will appoint the Committee. In turn, the Committee will forward at least five nominees to the Board for determining the ninth member of the Board. The Board will select three nominees to send to the Governor and the Governor will select the ninth member of the Board from that list by 12/1/2016.
54. Provides initial terms of service for Board members.
- Advisory Committee
55. Establishes a 10-member Committee on 1/1/2017 to serve as a liaison between the Board and its members.
 - a. Outlines Committee membership.

- b. Committee members are appointed by the Chair of the Board from names submitted by specified groups.

Governance

56. Requires the Board and any other PSPRS fiduciary to discharge duties:

- a. Solely in the interest of members and beneficiaries;
- b. For the exclusive purpose of providing benefits and paying reasonable administrative expenses;
- c. With care, skill and caution under the circumstances that a prudent person acting in a like capacity familiar with the matters would use in the conduct of an activity of like character and purpose;
- d. Impartially, taking into account differing interests of members and beneficiaries;
- e. Incurring only appropriate and reasonable costs; and
- f. Pursuant to a good-faith interpretation of the law governing the plans and systems under the Board.

57. Outlines specific considerations for the Board to make in investing and managing assets.

58. Requires the Board to:

- a. Diversify investments unless the trustee reasonably determines that it is clearly prudent not to; and
- b. Make a reasonable effort to verify facts relevant to the investment and management of assets.

59. Allows the Board to:

- a. Invest in any kind of property or type of investment consistent with these governance principles; and
- b. Consider benefits created by an investment in addition to only considering the investment return, but only if the trustee determines that the investment providing collateral benefits would be prudent without the collateral benefits.

60. Requires a trustee with authority to invest and manage assets to adopt a statement of investment objectives and policies for each retirement plan and system administered by the Board. Outlines information that must be included in the statement.

61. States that in evaluating trustee or fiduciary performance:

- a. Compliance with the governance principles must be determined in light of the facts and circumstances existing at the time of the action; and
- b. Decisions must be evaluated in the context of the portfolio as a whole and as part of an overall investment strategy as described.

62. Permits an employer, member, beneficiary or fiduciary to maintain an action:

- a. To enjoin an act, practice or omission violating the governance principles; and
- b. To redress the violation of or enforce governance principles.

63. Allows the court to award reasonable attorney fees and costs to either party.

64. Defines *fiduciary* and *trustee*.

Miscellaneous

65. Requires PSPRS to study methods for structured risk pooling and local board consolidation. The study:
 - a. Will consider which methods, if any, are in the best interests of PSPRS stakeholders.
 - b. Must be presented to the PSPRS Board by 1/15/2017.
 - c. Must be considered by the Board. The Board is required to report any recommendations for legislation to the President, Speaker and the Governor by 2/15/2017.
66. Requires any *future benefit increase* adopted by the Legislature for any PSPRS member to be fully paid in the year of enactment (amortization over a period of years is prohibited). Splits the cost for future benefit increases as follows:
 - a. Benefits for members hired before 7/1/2017 are paid by the employer; and
 - b. Benefits for members hired on/after 7/1/2017 are split equally between the employee and the employer.
67. Outlines the actuarial method that must be used to calculate the cost of the *future benefit increase*.
68. Includes any benefit increase that leads to a change in the present value of future benefits or a change to accrued liabilities in the definition of a *future benefit increase*.
69. Requires each employer to make contributions to PSPRS that are sufficient to meet normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability on a level percent of compensation basis for of all the employer's employees who are PSPRS members or PSPDC members, over a closed period of not more than 20 years as established by the Board.
 - a. Current law provides for a rolling period of at least 20 but not more than 30 years.
70. Enrolls an employee who qualifies for disability within the first 90 days of employment in Tier III PSPRS for the remainder of the employee's employment as of the date of disability and grants the employee an accidental disability pension.
71. Makes sections related to the COLA for existing members and retirees, along with the section providing "catch up" payments under the PSPDC for employees hired after 1/1/2012 but before 7/1/2017 conditional upon the amendment of the Arizona Constitution by the passage of SCR 1019 at the May 17, 2016 special election.
72. Contains a legislative findings and intent clause.
73. Contains a severability clause.
74. Makes technical and conforming changes.

CURRENT LAW

A.R.S. Title 38, Ch. 5 governs state retirement plans, including the four plans that fall under the Public Safety Personnel Retirement System:

- PSPRS, covering law enforcement & firefighters;
- Corrections Officer Retirement Plan (CORP), covering correctional officers, specific prison personnel, probation and surveillance officers and some dispatchers;
- Elected Officials Retirement Plan (EORP), covering city, county and state elected officials along with judges. NOTE: this plan is closed to new members; and

- Elected Officials Defined Contribution Retirement System (EODCRS), the successor plan to EORP covering the same individuals.

These four Plans are governed by the Board, comprised of seven members appointed by the Governor and subject to Senate confirmation ([A.R.S. § 38-848](#)).

Benefit Structure

- **Tier I** covers members hired before 1/1/2012 and provides:
 - 20 year retirement (80% max):
 - Uses the member's three highest years of salary (consecutive) in the last 20 years to establish the pension amount.
 - Retirees are eligible for a permanent benefit increase (PBI) if there is money available in the separate PBI account, up to 4% per year.
 - The PBI account is funded with ½ of all returns greater than 9% in any given year.
- **Tier II(a)** includes members who had less than 20 years of service on 1/1/2012.
- **Tier II(b)** covers members hired on or after 1/1/2012 and provides for:
 - 25 year retirement (max 80%), with a minimum age of 52 ½:
 - Uses the five highest consecutive years of salary in the last 20 years for establishing the pension amount.
 - Retirees are eligible for a PBI only when returns exceed 10.5% and funded status is greater than 60%.
 - PBI amounts range from 2%-4% and are triggered based on funded status.

ADDITIONAL INFORMATION

According to the [Arizona Public Safety Personnel Retirement System Actuarial Valuation \(June 30, 2015\)](#), there are 237 participating employer groups representing 33,041 PSPRS members at various phases of participation (active, inactive, retired, disabled, survivors). The average age at retirement is 51.5 years old and the average annual pension is \$59,974. The average number of years of service provided prior to retirement is 23.5. PSPRS has a current funded status of 50.3%.

PSPRS is an “agent multiple-employer” plan where employers pool assets for investment purposes but retain their own individual obligations (liabilities). Member contributions are statutorily capped at 11.65%, while the average employer rate is 42.61% (FY 2017). Actual funded status and employer rates vary across the plan (see Appendix III of actuarial valuation).